

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

Civil No. 2:22-cv-00293-JRG
(Lead Case)

JURY TRIAL DEMANDED

NETLIST, INC.,

Plaintiff,

v.

MICRON TECHNOLOGY TEXAS, LLC, et al.,

Defendants.

Civil No. 2:22-cv-00294-JRG
(Member Case)

JURY TRIAL DEMANDED

**SAMSUNG'S OPPOSITION TO NETLIST, INC.'S MOTION TO EXPEDITE BRIEFING
ON NETLIST'S MOTION FOR RELIEF FROM PROTECTIVE ORDER (DKT. 559)**

Netlist's motion to expedite is procedurally-flawed and its purported need for expedited treatment is simply the result of its own delay.

As an initial matter, Netlist failed to meet and confer with Samsung as required by L.R. CV-7(h). Instead, Netlist simply emailed Samsung's counsel on February 15, 2024, during the deposition of Samsung's damages expert and during the middle of the night in Korea, and demanded a response within three hours. Netlist did not wait for a response, and admittedly filed its motion without satisfying the meet and confer requirement. *See* Dkt. 559 at 3 ("I hereby certify that Netlist asked Samsung whether it would agree to an expedited briefing schedule, but received no response."). Thus, Netlist deprived Samsung of the opportunity to attempt to resolve this issue without Court intervention.¹

In addition, any urgency in timing is of Netlist's own making, having waited more than three months since the November 8, 2023 deposition of Mr. Calandra to seek leave to use his testimony in the C.D. Cal. Case. In fact, when Netlist previously attempted to use Mr. Calandra's testimony in the C.D. Cal. Case, as part of the November 27, 2023 C.D. Cal. Joint Status Report, Samsung explained that such use was improper under the protective order. *See, e.g.*, Dkt. 259-2 at 7-8. Samsung even filed a motion to enforce the protective order on January 17, 2024, explaining why Netlist failed to follow the procedures outlined in the protective order for dealing with disputes about confidentiality. *See* Dkt. 375. If Netlist so urgently needed to resolve the confidentiality issue, it could have moved for relief many months ago.

¹ Netlist's failure to confer demonstrates a disregard for this Court's rules, consistent with its disregard of the prefiling conference requirement in the C.D. Cal. Case, where Judge Scarsi recently denied one of Netlist's motions on that basis, among others. *See* Dkt. 538-1 ("The Court denies the motion on several independent grounds. First, Netlist failed to comply with Local Rule 7-3, which requires a prefiling conference of counsel to precede any motion. . . . A prefiling conference could have focused the issues in dispute.").

Finally, Netlist seeks to rush Samsung to respond in two business days to Netlist's seven-page motion that Netlist delayed filing for months. Samsung anticipates that it can diligently prepare and file its opposition to Netlist's motion in 11 days (i.e., by February 26, 2024), rather than the normal 14 days, which would leave plenty of time before the C.D. Cal. trial begins on March 26, 2024.

Dated: February 19, 2024

Respectfully submitted,

By: /s/ Daniel A. Tishman

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on February 19, 2024. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Daniel A. Tishman